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SENATE BILL 710

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO GAMING; AMENDING THE DEFINITION OF "TECHNICIAN".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2E-3 NMSA 1978 (being Laws 1997, Chapter 190, Section 5, as amended) is amended to read:

"60-2E-3. DEFINITIONS.--As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under common control with a company licensee; and

(2) is involved in gaming activities or

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1 involved in the ownership of property on which gaming is
2 conducted;

3 C. "applicant" means a person who has applied for a
4 license or for approval of an act or transaction for which
5 approval is required or allowed pursuant to the provisions of
6 the Gaming Control Act;

7 D. "application" means a request for the issuance
8 of a license or for approval of an act or transaction for which
9 approval is required or allowed pursuant to the provisions of
10 the Gaming Control Act, but "application" does not include a
11 supplemental form or information that may be required with the
12 application;

13 E. "associated equipment" means equipment or a
14 mechanical, electromechanical or electronic contrivance,
15 component or machine used in connection with gaming activity;

16 F. "board" means the gaming control board;

17 G. "certification" means a notice of approval by
18 the board of a person required to be certified by the board;

19 ~~[H. "certified technician" means a person certified~~
20 ~~by a manufacturer licensee to repair and service gaming~~
21 ~~devices, but who is prohibited from programming gaming devices;~~

22 ~~F.]~~ H. "company" means a corporation, partnership,
23 limited partnership, trust, association, joint stock company,
24 joint venture, limited liability company or other form of
25 business organization that is not a natural person; "company"

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1 does not mean a nonprofit organization;

2 ~~[J-]~~ I. "distributor" means a person who supplies
3 gaming devices to a gaming operator but does not manufacture
4 gaming devices;

5 ~~[K-]~~ J. "equity security" means an interest in a
6 company that is evidenced by:

7 (1) voting stock or similar security;

8 (2) a security convertible into voting stock
9 or similar security, with or without consideration, or a
10 security carrying a warrant or right to subscribe to or
11 purchase voting stock or similar security;

12 (3) a warrant or right to subscribe to or
13 purchase voting stock or similar security; or

14 (4) a security having a direct or indirect
15 participation in the profits of the issuer;

16 ~~[L-]~~ K. "executive director" means the chief
17 administrative officer appointed by the board pursuant to
18 Section 60-2E-7 NMSA 1978;

19 ~~[M-]~~ L. "finding of suitability" means a
20 certification of approval issued by the board permitting a
21 person to be involved directly or indirectly with a licensee,
22 relating only to the specified involvement for which it is
23 made;

24 ~~[N-]~~ M. "game" means an activity in which, upon
25 payment of consideration, a player receives a prize or other

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1 thing of value, the award of which is determined by chance even
2 though accompanied by some skill; "game" does not include an
3 activity played in a private residence in which no person makes
4 money for operating the activity except through winnings as a
5 player;

6 [Θ-] N. "gaming" means offering a game for play;

7 [P-] O. "gaming activity" means an endeavor
8 associated with the manufacture or distribution of gaming
9 devices or the conduct of gaming;

10 [Q-] P. "gaming device" means associated equipment
11 or a gaming machine and includes a system for processing
12 information that can alter the normal criteria of random
13 selection that affects the operation of a game or determines
14 the outcome of a game;

15 [R-] Q. "gaming employee" means a person connected
16 directly with a gaming activity; "gaming employee" does not
17 include:

18 (1) bartenders, cocktail servers or other
19 persons engaged solely in preparing or serving food or
20 beverages;

21 (2) secretarial or janitorial personnel;

22 (3) stage, sound and light technicians; or

23 (4) other nongaming personnel;

24 [S-] R. "gaming establishment" means the premises
25 on or in which gaming is conducted;

1 [~~F.~~] S. "gaming machine" means a mechanical,
2 electromechanical or electronic contrivance or machine that,
3 upon insertion of a coin, token or similar object, or upon
4 payment of any consideration, is available to play or operate a
5 game, whether the payoff is made automatically from the machine
6 or in any other manner;

7 [~~U.~~] T. "gaming operator" means a person who
8 conducts gaming;

9 [~~V.~~] U. "holding company" means a company that
10 directly or indirectly owns or has the power or right to
11 control a company that is an applicant or licensee, but a
12 company that does not have a beneficial ownership of more than
13 ten percent of the equity securities of a publicly traded
14 corporation is not a holding company;

15 [~~W.~~] V. "immediate family" means natural persons
16 who are related to a specified natural person by affinity or
17 consanguinity in the first through the third degree;

18 [~~X.~~] W. "independent administrator" means a person
19 who administers an annuity, who is not associated in any manner
20 with the gaming operator licensee for which the annuity was
21 purchased and is in no way associated with the person who will
22 be receiving the annuity;

23 [~~Y.~~] X. "institutional investor" means a state or
24 federal government pension plan or a person that meets the
25 requirements of a qualified institutional buyer as defined in

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1 Rule 144A of the federal Securities Act of 1933, and is:

2 (1) a bank as defined in Section 3(a)(6) of
3 the federal Securities Exchange Act of 1934;

4 (2) an insurance company as defined in Section
5 2(a)(17) of the federal Investment Company Act of 1940;

6 (3) an investment company registered under
7 Section 8 of the federal Investment Company Act of 1940;

8 (4) an investment adviser registered under
9 Section 203 of the federal Investment Advisers Act of 1940;

10 (5) collective trust funds as defined in
11 Section 3(c)(11) of the federal Investment Company Act of 1940;

12 (6) an employee benefit plan or pension fund
13 that is subject to the federal Employee Retirement Income
14 Security Act of 1974, excluding an employee benefit plan or
15 pension fund sponsored by a publicly traded corporation
16 registered with the board; or

17 (7) a group comprised entirely of persons
18 specified in Paragraphs (1) through (6) of this subsection;

19 [~~Z.~~] Y. "intermediary company" means a company
20 that:

21 (1) is a holding company with respect to a
22 company that is an applicant or licensee; and

23 (2) is a subsidiary with respect to any
24 holding company;

25 [~~AA.~~] Z. "key executive" means an executive of a

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1 licensee or other person having the power to exercise
2 significant influence over decisions concerning any part of the
3 licensed operations of the licensee or whose compensation
4 exceeds an amount established by the board in a rule;

5 ~~[BB.]~~ AA. "license" means an authorization required
6 by the board for engaging in gaming activities;

7 ~~[CC.]~~ BB. "licensee" means a person to whom a valid
8 license has been issued;

9 ~~[DD.]~~ CC. "manufacturer" means a person who
10 manufactures, fabricates, assembles, produces, programs or
11 makes modifications to any gaming device for use or play in New
12 Mexico or for sale, lease or distribution outside New Mexico
13 from any location within New Mexico;

14 ~~[EE.]~~ DD. "net take" means the total of the
15 following, less the total of all cash paid out as losses to
16 winning patrons and those amounts paid to purchase annuities to
17 fund losses paid to winning patrons over several years by
18 independent administrators:

19 (1) cash received from patrons for playing a
20 game;

21 (2) cash received in payment for credit
22 extended by a licensee to a patron for playing a game; and

23 (3) compensation received for conducting a
24 game in which the licensee is not a party to a wager;

25 ~~[FF.]~~ EE. "nonprofit organization" means:

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1 (1) a bona fide chartered or incorporated
2 branch, lodge, order or association, in existence in New Mexico
3 prior to January 1, 1997, of a fraternal organization that is
4 described in Section 501(c)(8) or (10) of the federal Internal
5 Revenue Code of 1986 and that is exempt from federal income
6 taxation pursuant to Section 501(a) of that code; or

7 (2) a bona fide chartered or incorporated
8 post, auxiliary unit or society of, or a trust or foundation
9 for the post or auxiliary unit, in existence in New Mexico
10 prior to January 1, 1997, of a veterans' organization that is
11 described in Section 501(c)(19) or (23) of the federal Internal
12 Revenue Code of 1986 and that is exempt from federal income
13 taxation pursuant to Section 501(a) of that code;

14 [~~GG~~] FF. "person" means a legal entity;

15 [~~HH~~] GG. "premises" means land, together with all
16 buildings, improvements and personal property located on the
17 land;

18 [~~HH~~] HH. "progressive jackpot" means a prize that
19 increases over time or as gaming machines that are linked to a
20 progressive system are played and upon conditions established
21 by the board may be paid by an annuity;

22 [~~JJ~~] II. "public post-secondary educational
23 institution" means an institution designated in Article 12,
24 Section 11 of the constitution of New Mexico and an institution
25 designated in Chapter 21, Articles 13, 14 and 16 [~~and 17~~] NMSA

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1 1978;

2 [KK-] JJ. "progressive system" means one or more
3 gaming machines linked to one or more common progressive
4 jackpots;

5 [LL-] KK. "publicly traded corporation" means a
6 corporation that:

7 (1) has one or more classes of securities
8 registered pursuant to the securities laws of the United States
9 or New Mexico;

10 (2) is an issuer subject to the securities
11 laws of the United States or New Mexico; or

12 (3) has one or more classes of securities
13 registered or is an issuer pursuant to applicable foreign laws
14 that, the board finds, provide protection for institutional
15 investors that is comparable to or greater than the stricter of
16 the securities laws of the United States or New Mexico;

17 [MM-] LL. "registration" means a board action that
18 authorizes a company to be a holding company with respect to a
19 company that holds or applies for a license or that relates to
20 other persons required to be registered pursuant to the Gaming
21 Control Act;

22 [NN-] MM. "subsidiary" means a company, all or a
23 part of whose outstanding equity securities are owned, subject
24 to a power or right of control or held, with power to vote, by
25 a holding company or intermediary company; and

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1 NN. "technician" means a person who is approved by
2 the board to repair and service gaming devices, but who is
3 prohibited from programming gaming devices; and

4 00. "work permit" means a card, certificate or
5 permit issued by the board, whether denominated as a work
6 permit, registration card or otherwise, authorizing the
7 employment of the holder as a gaming employee."

8 Section 2. Section 60-2E-13 NMSA 1978 (being Laws 1997,
9 Chapter 190, Section 15, as amended) is amended to read:

10 "60-2E-13. ACTIVITIES REQUIRING LICENSING.--

11 A. A person shall not conduct gaming unless ~~[he]~~
12 the person is licensed as a gaming operator.

13 B. A person shall not sell, supply or distribute
14 ~~[any]~~ a gaming device or associated equipment for use or play
15 in this state or for use or play outside of this state from a
16 location within this state unless ~~[he]~~ the person is licensed
17 as a distributor or manufacturer, but a gaming operator
18 licensee may sell or trade in a gaming device or associated
19 equipment to a gaming operator licensee, distributor licensee
20 or manufacturer licensee.

21 C. Except as provided in Subsection D of this
22 section, a person shall not manufacture, fabricate, assemble,
23 program or make modifications to a gaming device or associated
24 equipment for use or play in this state or for use or play
25 outside of this state from any location within this state

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1 unless [~~he~~] the person is a manufacturer licensee. A
2 manufacturer licensee may sell, supply or distribute only the
3 gaming devices or associated equipment that [~~he~~] the
4 manufacturer licensee manufactures, fabricates, assembles,
5 programs or modifies.

6 D. Upon receiving a written request from a person
7 who manufactures associated equipment, the board may waive the
8 requirement for a manufacturer's license on the terms and
9 conditions the board deems necessary as long as the waiver is
10 consistent with the purpose of the Gaming Control Act.

11 E. Except as provided in Section 60-2E-13.1 NMSA
12 1978, a gaming operator licensee or a person other than a
13 manufacturer licensee or distributor licensee shall not possess
14 an unlicensed or illegal gaming device or possess or control a
15 place where there is an unlicensed or illegal gaming device.
16 Any unlicensed or illegal gaming device, except a gaming
17 machine in the possession of a licensee while awaiting transfer
18 to a gaming operator licensee for licensure of the machine, or
19 as provided in Section 60-2E-13.1 NMSA 1978, is subject to
20 seizure and forfeiture pursuant to Section 30-19-10 NMSA 1978.

21 F. A person shall not service or repair a gaming
22 device or associated equipment unless [~~he~~] the person is
23 licensed as a manufacturer, is employed by a manufacturer
24 licensee or is a technician [~~certified by a manufacturer~~
25 ~~licensee and~~] employed by a distributor licensee or a gaming

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1 operator licensee.

2 G. A person shall not engage in [~~any~~] an activity
3 for which the board requires a license or permit without
4 obtaining the license or permit.

5 H. Except as provided in Subsections B and D of
6 this section, a person shall not purchase, lease or acquire
7 possession of a gaming device or associated equipment except
8 from a distributor licensee or manufacturer licensee.

9 I. A distributor licensee may receive a percentage
10 of the amount wagered, the net take or other measure related to
11 the operation of a gaming machine as a payment pursuant to a
12 lease or other arrangement for furnishing a gaming machine, but
13 the board shall adopt a regulation setting the maximum
14 allowable percentage."

15 Section 3. Section 60-2E-13.1 NMSA 1978 (being Laws 2002,
16 Chapter 102, Section 9) is amended to read:

17 "60-2E-13.1. TEMPORARY POSSESSION OF GAMING DEVICE FOR
18 LIMITED PURPOSE.--

19 A. A public post-secondary educational institution
20 may temporarily possess gaming devices for the limited purpose
21 of providing instruction on the technical aspects of gaming
22 devices to persons seeking [~~certification~~] approval of the
23 board as technicians qualified to repair and maintain gaming
24 devices. [~~Any~~] A gaming device allowed for such limited use
25 shall be subject to registration, transport, possession and use

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1 requirements and restrictions established in board regulations.

2 B. Trade shows and similar events for the purpose
3 of demonstrating and marketing gaming devices may be conducted
4 in the state at the discretion of the board. [~~Any~~] A gaming
5 device allowed in the state for such limited use shall be
6 subject to registration, transport, possession and use
7 requirements and restrictions established in board regulations.

8 C. A person may possess an unlicensed gaming device
9 used by [~~him~~] the person for the purposes of testing or
10 demonstration if that person is a manufacturer licensee or has
11 obtained a waiver pursuant to the Gaming Control Act."